85-2018 (1)

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ARTHUR KUNGLE, JR., Petitioner

v.

ST. JOHN'S COLLEGE, et al.

Respondents

PETITION FOR

A WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF MARYLAND

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79pp

a. QUESTIONS PRESENTED:

1 Are fundamental and important rights with responsibility proper standards for all, particularly when articulated and guaranteed by our constitutions and international agreements, and can such liberty properly be denied, and are statutes that do so deny valid?

2. Is irregular procedure proper, and is dismissal thereby relying on improper precedent and respondents fraud fair and just?

3. Can appellate dismisal properly rely on irregular or improper process or procedures and on improper precedent and respondents false statements?

4. Has there been justice with law or discretion, and is right understanding limited to the superior and unavailable to us others?

LIST OF PARTIES

The parties to the proceedings below were the Petitioner Arthur Kungle, Jr., and the Respondents St. John's College, Edwin Delattre, Jerome Lapides, Samuel Kutler, Edward Sparrow, and Bruce Jacobsen. These are the parties before this Court. 28 U.S.C. §2403(b) may be applicable and thus this paper is also served upon the Attorney General of Maryland, Stephen Sachs.

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Johnson v. United States, 398 A. 2nd 354 (D.C.C.A., 1979) 47

Katzenbach v. Morgan, 384 U. S. 641 (1966) 35

Kemp-Pontiac v. S & M Constr., 33 Md. App. 516 (1976) 53

King v. So. Jersey Nat. Bk., 330 A. 2nd 1 (N. J., 1974) 32

Kolender v. Lawson, 103 S. Ct. 1855, (1983) 61

Marbury v. Madison, 5 U. S. 137(1803) 46

Martin v. Floyd, 317 S. E. 2nd 133 (S. C., 1985) 53

Milburn v. United States, 734 F. 2nd 762 (1984) 46

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State v. Schmid, 423 A. 2nd 615 (N. J., 1980), app. dis. Princeton v. Schmid, 455 U. S. 100 (1981) 33

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United States v. the Amistad,
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J. Acton, Essays in the Liberal Interpretation of History(1967) 61

M. Adler & van Doren, Great Treasury of Western Thought(1977) 56

A. Amsterdam, Void for Vaguenesss, 109 U. Pa. L. R. 67 (1960) 34

I. Berlin, Concep½ts & Categories(1979) 61

I. Berlin, Four Essays ofn Liberty(1969) 61

H. Berman, Law and Revolution(1983)40, 61

W. Burger, Interdepedence of Our Freedoms, 9 Akron L. Rev. 403 (1976) 42

J. Campbell, Lives ofthe Lord chancellors, (18510 40

B. Cardozo, Paradoxes of the Legal Science, (1928) 61

C. Clark, Simplified Pleading, 2 F. R. D. 456 (1943) 45

R. Collins, Constitutional Law, Nat'l L. J., 5-18-84 41

E. Corwin, Higher Law Backgroudn of American Consitutional Law, 42 Harv. L. R. 149 1928) 32

K. Davis, Discretionary Justice(1960) 59

Deukmajan & Thompson: All sail and no anchor, 6 Hasting Const. L.Q.(1975) 43

F, Frankfurter, Of Law and Men (1965) 61

F. Freund, NOMOS VII, Ratioonal Decsions, (1974) 61

H. Friendly, Some Kind of Hearing, 123 U. Pa. L. R. 1267 (1975) 38

L. Hand, Spirit of Liberty 61

S. Hofstader, Protecting State Procedural Rights in Federal Court:a New Role for Substantive Due Process, 30 Stanford L. R. 1019 (1978) 48, 52

A. Howard, Magna Carta (1964) 39

J. Kent, Commentaries on American Law, (1848) 40

T. Kuhn, The Structure of Scientific Revolutions (1970) 61

H, Monagham, Overbreadth, 1981
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M. Morgan, Fundamental State Rights: a new Basis for Strict Scrutiny in Federal Equal Protection Review, 17 Ga. L. R. (1982) 33

Niemeyer & Richards, Maryland Rules Commmentary (1984) 45, 46

Nowak, et al, Constitutional Law (1983) 33, 34

H. Oleck, Non-Profit Corporations (1980) 38

R. Pound, Justice according to Law, 13 Col. L. R. 696 (1913) 59

E. Rosenstock-huessy, Out of Revolution autobiography of western man (1938) 40, 61

R. Stern, Separability and Separability Clauses, 51 Harv. L. Rev. 76(1937) 34

J. Story, Equity Pleadings (1850) 45

W. Swindler, Minimum Standards of Constitutional Justice: Federal flooor and State Ceiling, 49 Mo. L. Rev. (1984) 43

W. Swindler, Sources and Documents of U.S. Constitutions(1973-79) 42

G. Webb, Plain Language Law: Civil Wrongs (Torts)(1981) 34

Criminal Wrongs (Crimes)(1981) 34

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W. Willkie, One World, (1943) 61

C. Wright, Law ofthe Federal Courts (1983) 45, 60

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ST. JOHN'S COLLEGE, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

The Petitioner, Arthur Kungle Jr, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland, entered in the above-entitled proceeding on March 10, 1986.

Opinion Below

The judgment of the Court of Appeals of Maryland (in No. 574, September Term, 1985) denying Petition for Writ of Certiori is not yet reported (Md. (1986)), but is included in the Appendix.

The judgment of the Court of Special Appeals of Maryland (in No. 330, September Term, 1985) is reported, 65 Md. App. 776 (1985) and the opinion, which is not reported, is included in the Appendix.

JURISDICTION

The judgment of the Court of Special Appeals of Maryland denying Petition for Writ of Certiori was entered on March 10, 1986. The Court of Special Appeals of Maryland denied Petitioner's Motion for Reconsideration on December 30, 1985, left standing thei dismissal of Petition's Appeal on November 26, 1985, and the mandate issued. That appeal was from the February 1, 1985 Circuit Court for Anne Arundel County's denial

of Motion to Alter or Amend it's judgment of Dismissal of Petitioner's Complaint on January 7, 1985, and reinforcement of that Dismissal.

This Petition is being docketed in this Court wthin 90 days, plus Sunday, of the judgment of the Court of Appeals of Maryland. The jurisdiction of this Court is invoked under 28 U.S.C. §;257(3), in order to bring all questions before this Court.

Constitutions, statutes, treaties and rules involved (restated in th appendix, excepting international agreements)

United States Constitution

Art. VI, Sec. 2

Amendments:

Art. 1

Art. 5

Art. 9

Art. 10

Art. 14

Maryland Constitution

Declaration of Rights

Art. 1

Art. 2

Art. 3

Art. 5

Art. 6

Art. 19

Art. 20

Art. 21

Art. 24

Art. 36

Art. 40

Art. 45

Statutes:

28 Edw. III, Cap. 3

(in App.Br.Apx.)

1784 Md. Law Ch. 37

(&by-laws)

Corps. and Assns.:

Art. 5-201

Educ. Art. 26-101

26-102

Md. Ann. Code, Art. 27-

577

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International Human Rights

instruments (1980)

OAS Charter and Protocol

U.N. Charter

American Declaration of

Rights and Duties of Man

Universal Declaration of

Human Rights

American Convestion on

Human Rights

Conference on Security

and Cooperation in

Europe (Helsinki

Accords)

Magna Carta, Ch. 39 and

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Rules:

Fed. R. App. P. 28(a)

Fed. R. Civ. P. 8

P. 10

P. 12

P. 41(b)

Maryland Rules (Civ. Proc.)

831(c)(4)

1031(c)

2-303

2-305

2-322

Statement of the Case

1. Before filing:

Citizen Petitioner was accepted as a student member of St John's College, Annapolis, Maryland, in 1963, and grew to participate, helpfully as possible, as an alumni member of the corporation with rights and duties.

In May 1981 an administrator pronouced exclusion from the corporate property without reasons why and with discriminatory comment about others R 96. In September 1981 petitioner responded, raising issues of denial of fundamental rights, with responsiblity, of: freedom of speech, association and religion for himself and others, and objecting to the lack of fair procedure R 98. Subsequent visits discovered little more R101-110.

In November 1981, the administrator pronounced permanent ban, finally alluding to, or charging, "abuse of freedom" of speech, writing, belief, thought, religion, association and movement R111. Petitioner's April 1982 response R113-119 was arguably long and rambling. Further requests for information on the allusions or for redress to officers or Board were ignored.

Followiing much study, and the 1984 Williamsburg meeting on developments in state constitutional law--called for beforehand by the petitioner--and finding the Maryland Rules in disarray in the state library, and failing to receive promised and to be paid for legal aid, petitioner/appellant/plaintiff

filed suit in May 1984, in Equity.

2. Before the lower court: In May 1984, there was a 1st complaint and curative amendments Record 7 and 35 (henceforth R = Record)*. Then and thereafter, consistently and with diligence, plaintiff argued for his citizenship and membership in the corporation, and against improper

* in appendix h - 1

exclusion from campus, without fair process, for exercise of fundamental rights of speech, religion, association and movement, and their reciprocal exercise by others, and against discrimination, denials, and false dealing under applicable state and federal constitutions, international agreements corporate, common and statutory law, and asked appropriate declarative, injunctive and other relief.

Defendants demurred as to cause of actions, sufficiency of facts,

claims for relief, proper forum, and laches, and argued constitutions, agreements and laws inapplicable (R 13-22). (Then and thereafter they moved to strike and dismiss.) They promised to show Plaintiff's presence was dangerous and disruptive (R-47), (but did not - and student and alumni affidavits denied allegation (R 128-130, 176-178 and appendix).

At pre-trial conference, Judge Cawood asked for a fleshing out of the Complaint with more facts. New Maryland Rules were

in effect but at first hard to procure. In August, thus there was a 2nd Amended Complaint according to pre-trial conference (and correction R 63-72, 75)* and Amendment of Caption for necessary others R 85. Plaintiff sought discovery and got a request for a protective order, without required good faith effort at resolution. Defendants continued motion practice. (R 73, 79-84).

At a September 1984 hearing on motions before Judge Wolff, the opposition

* in appendix h - 18

feigned lack of understanding of pleadings and issues. (Transcript hereafter T = Transcript). Plaintiff entered proof of their long knowledge (T 12-13). Amendment of complaint or pleading to show correspondence (R 96-122)*

Judge Wolf, having read through the complaint cited a federal case where pleadings were long and rambling and suggested getting help drafting a revision. "There are certain ways things must be stated." (T-22) The entire

* Opening cross notices in appendix k (iv) - k - 24

Complaint was struck with 30 days to revise.* Plaintiff suffered a rear-end collision by a drunk that evening, and with other disasters, this slowed efforts, and a lawyer again defaulted on promised help, nor were new books on forms for Maryland pleadings yet available.

In October, a 3rd revised complaint was;** in spite of difficulties, filed,

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* order in appendix k(ii) - k - 1
** in appendix h - 52

R-135 and a supplement to revised Complaint and to correspondence for events after filing (R-148). Defendants objected to form and denied understanding (R-140), Plaintiff attempted to properly answer their superb stonewalling (R-160).

Before Judge Wolf in January, 1985, Defendants indicated they understood at least part of the Complaint and suggested memoranda on due process, state action and their relation to the college (T 31-33), and offered to submit discreditable (T-53) affida-

vits about the Plaintiff. Plaintiff entered additional affidavits*, documents an land records showing relation to the State (R 168-178). The Judge avoided the potential embarrassment of evidence and struck the whole Complaint and dismissed the case. (T-58)**

A motion to alter or amend judgment objected to surprise, continued constitutional questioning, presented newly available corporate by-laws to compliment older charters (R 181-183). It was denied*** and order of appeal issued. Defense stoppage denied.

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* Contradicting defense allusions. k - 40

** in appendix k(ii) - k - 1+

*** in appendix k(ii) - k - 1+

3. Before the Court of Special Appeals of Maryland.

Little agreement on record was possible, but almost all necessary materials were put in extract, and the necessary parts in order in the brief. In spite of several dumb mistakes, there was no effort or intention to delay, prejudice, evade or violate courts, parties or rules. Brief was in substantial compliance, *

* And tried to follow masters of modern appellate practice.

and delivered twenty minutes late - one of the travails of individual efforts - and motion practice resumed.* Appellees, without required explanation, reduplicated most of the extract already printed, but in their brief, carefully changed dates, events an arguments to suit their argument of Plaintiff-Appellant's unintelligible and incomprehensible pleading and rule breakig, but again clearly indicated they understood that the issues raised included:

* Dismiss, dismiss, dismiss.

"...exclusion from corporate membership for exercise of freedoms...exclusion without a hearing...ability to represent others ...conflicts between 'Statutes' and our 'constitutions'..." Appellee Brief at 25-26

At oral argument in polite deference to the panel, Appellant recognized that modern judges, following Clark and Story, know more about procedure and focused on the rights and duties of man, including, as Judge Moylan asked, in "a state of nature". It was answered that natural and civil society

differ in unwritten and written rules; there is a different reach of federal and state constitution according to the involvement of the state and openess to the public, and rights and duties of and toward individuals on compus differ for members and non-members negliecting the international aspect. Judge Moylan asked if the state, or rather St. John's, wanted to respond. Judge Bell chimed in "that shows his mind set." Appellee

argued for dismissal, claiming everything was incomprehensible.

Appellant rebutted that by the evidence, and their own argument shows they have long known the issues and are more in control of the facts. Judge Garitz said, "Well, you were told their concerns." Response; But only after meetings, notice is supposed to precede a hearing on charges. The Court was reminded of the different wording of state and federal bills of rights: "everyone has a right/or duty to..."

and "Congress shall make no law", "...no state shall...". This is distinction in all fundamental international agreements. And the Guidance and Blessing of God was asked for all.

On November 26, 1984, the Maryland Court of Special Appeals dismissed the appeal, for purported imperfections of the brief, relieing on cases dealing with deceptive and improper extracts, and on the fabrications of the appellees. Appellant was suprised at this and at the court's avoidance of the very important issues presented, and at their reliance on other considerations

than what was discussed at oral argument. Thereafter appellant filed: a motion to exclude unnecessary printing costs, and a motion for reconsideration: reinstatement and review of important questions, and errors below and conflicts above. The first was ignored and the later denied and the mandate issued on December 30, 1985--even as the Year End Report of the Chief Justice came out decrying false pleading and practice.*

4. Before the Maryland Court of Appeals: Petitioner/appellant/ plaintiff petitioned the court for a writ of certiori to review the proceeding below, with regard to error, conflicts, and very important issues (following carefully

* opinion in appendix k(ii) - k - 8

the advice of Judge Levine (and Singlely) in the Maryland appellate Practice Handboook as to what is important). Respondents argued otherwise.

The Court of Appeals denied the writ on March 10,1986, not finding it desirable or in the public* interest (and avoiding 8 of 10 standards suggested by Judge Levine.)

5. Thus there is this petition to the Supreme Court of the United States of America.

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* judgment in appendix k(iii) - k - 22

h. How the Federal Questions were Presented

Petitioner consistently tried to argue that fundamental rights with responsbility and procedural fairness are protected by common, statutory, and constitutional law, and guaranteed by the state and federal constitutions, and international agreements, and where not one, then still another: in complaints R 7-9 & 35, 63-72 & 75, 135-138, & 148; Appellate brief 3, Petition for Writ 2-4 (this appendix). Suprised at having the whole complaint struck and dismissed, additional constitutional challenges were raised in the Motin to alter or amend R181-183:

> Plaintiff challenges Md. Ed. 26-101, and if necessary, Md. Code Ann. 27-577, as unconstitutional civilly or criminally, under the state and federeral constitutions, being prior and excessive restraints, vague, overbroad, & possibly more. & claims to speak for other. (cites omitted) R183

This was continued in questions presented: Appelllate brief 3, & Petition for stateWrit 2-4.

Maryland's new rules of civil procedure are based on federal rules, and petitioner relied on Clak, Story, Wright & Miller, beginning in Memorandum in support of plaintiff's response to defendant's motion to dismiss R 160-164. (An earlier memo R 30-31 was limited by family tragedy and difficulty in obtaing the new rules.) Circuit Judge Wolff based his decisions to strike and to dismiss totally on a Maryland federal case T 21, 56-57--this turned out to be: Holsey v. Collins, 90 F.R.D. 122(1981), siatinguished by petitioner in Appellant brief 13, Reply Brief 9, and Petition for Writ12-13.

Petitioner charged fraud and false dealing from the beginning R 7-9 etc., and defendants falsely argued they did not understand R 141, T 4. but it was not until they changed the dates of the entry of evidence of knowledge R 95-122, Appelleee's brief 12 (Contra: T 12-13) that it was demonstrable. Then fraud was based on Supreme Court precedent: Motion for Reconsideration 21, and, with the availability of the Chief Justic'e 1985 Year End Report, Petition for Writ 18-19.

The Maryland Court of Special Appeals introduced federal considerations by ignorig constitutionally protected rights, followed up in Motion for Re-consideration 18, & Petiton for Writ 20. They introduced a federal question of subversion, Opinion 5, followed up in Motion at 23, and Petition at 20.

They also disparaged international law and agreements and thereby reinforce the federal and international considerations due, argued from the beginning and hence followed through.

Therefore Maryland courts at all levels have entertained, and felied on, ignored, or denied these important considerations, without independent and adequate support. *

* Record of question in appendix h

j. Why this Petiton should issue:

In this case and controversy are involved elements of questions fundamental to our people and history. These are imperfectly stated and perhaps less so analyzed. But the problems of fundamental rights with responsibility, justice as fairness, the relation of process and procedure, and the availability of all of this to all our people are serious and substantial.

1. A. FUNDAMENTAL RIGHTS SHOULD BE GUARANTEED

Fundamental rights, of speech, thought, religion and association, and movement, are protected by our constitutions Hornbeck v.Somerset Co., 295 Md. 597, 641 (1983). Historically,

> Many of the rights which the Constitution of the United States protects at this moment against legislative powers were first protected by the common law against one'e neighbors. E. Corwin, Higher Law Background of American Constitutional Law 42 Harv. L. R. 149, 170 (1928)

and,

> ..one of the most important functions performed by state constitutional bills of rights which is not performed by the federal constitution is the protection of citizens against private oppression as well as oppression by the state. Pashman, J., Diss. King v. So. Jersey Nat. Bk, 330 A. 2nd 1, 18 (N.J., 1974)

This Court has recognized that states offer more protection of fundamental freedoms: Mills v. Rogers, 457 U.S. 291, 300 (1981), Pruneyard v. Robbins, 447 U.S. 573, 581 (1980) (followed: State v, Schmid,

423 A. 2nd 615 (N.J., 1980), app. dis. Princeton v. Schmid, 455 U.S. 100 (1981), Pennsylvania v. Tate, 432 A. 2nd 1382 (1981).)

When a state actively or evasively ignore or denies these gundamental guarantees, it is a violation of the 14 th Amendment's due process and equal protection clauses (petitioner declines to lecture this Court on these, but see Nowak, et al, Constitutional Law, (1983) 416, 422, 452, 457, 533, 539, 590, 816, and M. Morgan, Fundamental State Rights: a new Basis for Strict Scrutiny in Federal Equal Protection Review, 17 Ga. L. R. (1982).*

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* Often these issues are termed 1st amendment claims but it is understood that it is not the 1st amendment by itself, but by virute of the 14th amendment that it is applicable to the states. Consideration of what some term 1st amendment rights without the 1st amendment is deffered, but clearly all of these things are interrlated.

1. B. STATUTES DENYING FUNDAMENTAL RIGHTS ARE INVALID

Statutes supposedly for school security or trespass, such as Md. Educ. 26-101 and Md. Ann. Code 27-577, when denying important and fundamental rights, violate the 14th amendment (Nowak, supra, 457, 533 & 816), especially when, as here, vague, overborad, or prior restraints (Nowak, supra, 867, 871, 1021, see also: A. Amsterdam, Void for Vaguneness, 109 U. Pa. L. R. 67)1960), H. Monagham, Overbreadth, 1981 Sup. Ct. Rev. 1, R. Stern, Separatbility and Separability Clauses 51 Harv. L. Rev. 76, (1937).) Plain Language Law: Civil Wrongs (Torts) and Criminal Wrongs(Crimes) (G, Webb, 1981) should be understandable to citizens so that they will know what they should and should not do.*

*Standing to defend any of this, for self and others would be more fully argued if petition is granted.

1. C. INTERNATIONAL GUARANTEES APPLY WHEN DOMESTIC PROTECTIONS FAIL

If the state and federal constitutions do not provide individuals guarantees and standards for freedo, rights and duties, it is proper to look to international law, particularly as articulated in the agreements of the OAS and UN. Thisis the obverse of the principle that it is not necessary to look to international instruments when our constitution provides protections or standards Katzenbach v. Morgan, 384 U.S. 641, 646 n. 5 (1966), Hurd v. Hodges, 334 U.S. 24, 28 n. 4 (1948).

International agreements are operative under the Helsinki Accord, Sec. VII (this appendix), and the interamerican system (Handboookof existing Rules Pertaining to Human Rights in the Interamerican Sytem, OAS (1983). Also involved are: U.S. Const. Art. VI, Sec.2, and the privileges and immunites clause 35

of the 14th amendment--for the 19th century Courts can not have included in thier denials of aspects of national citizenship what was not articulated or agreed on until the 20th century. (It is also better exhaust domestic remedies before turning elsewhere.)

1. D. GOVERNEMENTS MUST PROTECT FUNDAMENTAL & UNIVERSAL RIGHTS

This Court has recognized that important and fundamental principles are universal and deserving of protection, whether articulated or not: UNITED States v. the Amistad, 15 Pet. 518, 594 (1841)(universal freedom and equlaity), United Statees v. cruikshank, 92 U.S. 542, 551 (1875)(association, as a right not "granted" to the people --or created--but one long before our constitutions, with a duty of subsequent

states to protect it)(followed: Spayd v. Ringling Rock Lodge, 270 Pa. 67, 113 A. 70 (1921)(and not to be denied by government, or organization or individual).

It is the sorry history of this nation that the states did not properly protect all their citizens and their rights that made the 14th amendment necessary, and throughmuch difficulty, the federal bill of rights became thereby applicable to the states (as this Court knows by heart).

In all of this important principles are in conflict and at stake.

2. A. FAIR PROCEDURE SHOULD BE BASIC

Important, too, is fair procedure, whether called due process or natural justice. It applies to every level of our society, including colleges and corporations.* Compare: H. Friendly, Some Kind of Hearing 123 U. Pa. L.R. 1267 (1975), and H. Oleck, Non-Profit Corporations, Ch. 28, Disciplinary and Associational Rights: for almost every element of a fair hering, more familiarly stated in criminal proceedings, in the U.S. Const. 5th amendment(parallel Md. Const. Dec. Art. 21), there is a domestic and old English case (supposedly guarnteed by Md. Const. Dec. Art. 5). See also: Dartmouth College v. Woodward, 17U.S. 518, 700 (1819),

* Other related matters of corporate misdeeds, acts ultra vires or against the members are related and subsumed

2. B. INTERNATIONAL REDRESS & PRINCIPLES APPLY IN ABSENCE OF DOMESTIC ONES

Maryland's putative guarantees:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived ofhis life, liberty or property, but by the judgment of his pers, or by the Law of the Law of the Land. Art. 24, Md. Const. Dec. of Rights

> That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and sepeedily without delay, according to the Law of the Land. Art. 19, Md. Const. Dec. of Rights

are translations of Ch. 39 & 40 of Magna Carta (A. Howard, Magna carta, 43(1964) (the latter clause as improved by Coke).

Fair proceedings ought to be guaranteed by common law, statute, and constitutions, and where not by them, then by international instruments: for example: the American Declaration of Rights and Duties of Man Art. I, II, XVIII, XXV, XXVI(innocence presumed).

Berrien v. Politzer, 83 U.S.App. 23 (1947), Niner v. Hanson, 217 Md. 298 (1958), J, Kent, Commentaries on American Law (1848) II, 301 n.a, citing to Lord Camden in Shipley's Case(only accessible in a few editions of Campbell's Lives of the Lord Chancellors, Appellant Reply Apx. 1, and this appendix: the Justices of the United States Supreme Court are similarly situated and succssors to eartthly Lord Chancellor Camden, in our highest equity court.) *

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* (See also: E. Rosenstock-huesy, Out of Revolution: autobiography of western man, 552 (1938), and H. Berman, Law and Revolution: The Formation of the Western Legal Tradition, 294 (1983).

1/2 A. THESE PROBLEMS WILL COME AGAIN

'In less than two centuries, the people of the 50 states have adopted more than 130 constitutions, and have copiously amended them in the intervals between their adoptions.'
William F. Swindler
Are state constitutional rights "fundamental" rights? in what sense, if any, are they essential? Things truly fundamentaly are absolutely necessary. They are the sort of things for which peopple die. Notwithstanding the phoenix-like resurection of interest in state bills of rights, it would be suprising to find anyone in 1984 willing to sacrifice life and limb for this cause. R. Collins, Constitutional Law, Nat'l L. J., 5-18-84, 14

At 35, Prof. Collins tells both of the passsing of Dean Willian Swindler on May 15 1984, and of Justice Stevens' called to look to the state constitutions, 52LW 3824, 5-15-84. Across the page Justices White and Brennan note the problem substantially different standards in different courts.

Some states and people may not mean everyone to have the same rights --and perhaps term them privileges. Such seems to have been the original intent of Maryland's founders:

> Historians have pointed out that the Maryland Declaration (of 1776) embodied the prevailing Whig theory of government by trustee rather than by agent--i.e.. representatives were those qualified to determeine what was best for their constituents rather than being instruments for directly carrying out the desires of their constitutents. This elitist theory was not so much refuted as ignored in the later Jacksonian age. W. Swindler, Sources and Documents of U.S. Consitutions, (1973-1979) IVa (Md), 392

Respect for the states isimportant in our federal system, but there is an Interdependence of Our Freedoms (W. Burger, 9 Akron L. Rev. 403 (1976)). How sure are our foundations if fundamentals are insubstantial? Fed. R. C. P. 8(f), Md. R.2-303(e)

(W. Swindler, Minimum Standards of Constitutional Justice:Federal floor and State ceiling, '49 Mo. L. Rev. 1 (1984), Deukmajan & Thompson: All sail and no anchor, 6 Hastings Const. L. Q. 975 (1979))

1/2 B. THESE PROBLEMS ARE PRESENT NOW

There are many current disputes on college campuses about rights and duties with and without the law and procedure, relieing ultimately on several of these same cases, See Universities use stronger tactics Christian Science Monitor, March 20-21, 1986. What does it tell the citizens of tommorrow if none of this matters?

3. A. COMMON PROCEDURE RELIES ON FEDERAL PROCEDURE

Maryland's new civil rules follow federal rules closely, thus:

Md. R. Civ. P.	Fed. R. Civ. P.
2-303 b & c	8 e
2-303 d & e	10 c & f
2-305	8 a
2-322 b	12 b
2-322 d	12 c
2-322 e	12 f & 41 b
2-322 f	12 g

And modern pleading may begin with:

> §23. An original Bill, praying relief, is (as we have seen) founded upon some right claimed by the party plaintiff, in opposition to some right claimed, or wrong done, by the party defendant. In order to enabel the Court to understand the case, and to administer the proper remedial justice, as well as to apprize the opposite party of the nature of the claim, and of the redress asked, and to enable him to make the proper defence thereto, it would seem indepensable, that the Bill should contain a clear and exact statement of all the material facts. It should, therefore show, with reasonable certainty, the rights of the plaintiff; the manner, in which he is injured; the person

> by whom it is done; the material circumstances of the time, place, manner, and other incidents; the particulars, in which he wants the assistance of the Court, or (in other words) the relief, which he seeks; the prayer therefor, and also that the defendant may answer upon oath the matter charged against him; and lastly, that the case as stated, and the relief as asked, are properly within the jurisdiction of a Court of Equity.
> J. Story, Equity Pleadings Ch. II (1850)

But, as he said, things got complicated, and there was a need for Simplified Pleading(C. Clark, 2 F.R.D. 456(1943).

> A complaint is sufficient if it meets the test of rule 8(a), though it would be subject to demurer in state courts for failing to set forth the detailed facts cherished in the state system. C. Wright, Law of the Federal Courts(1983)435

Thus the difference between Fed. R.C.P. 8(a) and Md. Rule 2-305 is that the one

> requires that a pleading contain a short plaint statement of the claim showing that the plaintiff is entitled to relief, (and the other) requires a statement of facts essential to state a cause of action. Niemeyer & Richards, Maryland Rules Commentary 135 (1984)

But documents were introduced and referred to (id, as 132) that showed fundamental and important rights were at stake, and forthe denail of these there should be a remedy (Marbury v. Madison, 5 U.S. 137(1803) & Co).

The lower court was wrong not to consider the valid and federal claims separately, not to strike only the excess, not to proceed on what was understood or known, and to dismiss,with reliance on hearsay, when there were facts to support the claim.*

* Bolding v. Holshouer, 575 F.2nd 461, 464, cert. denied, 439 U.S. 837 (1978), Atwood v. Humble Oil. 243 F. 2nd 885, 888 (1957), Simmons creek Coal v. Doran, 142u.s. 417, 438 (1891), Milburn v. United States, 734 F. 2nd 762, 765 (1984), Hospital Bldg Co. v. Rex Hospital Trustees, 425 U.S. 738, 746 (1975).

The proceeding in the lower court also prove the truth of the warnings of Clark and Wright about: changing judges, no discovery, shaddow boxing, impossible pleading requirements, facts more in the control of the defendants. That aosl raises the abuse of discretion standards in Johnson v. United States, 398 A. 2nd 354, 361-367 (D.C.C.A., 1979)(appellate courts must determine:

> whether the exercise of discretion was in error, and, if so, whether the impact of that error requires reversal. at 367)

With such serious issues and conflicts Maryland's appellate courts went along.

After the Williamsburg meeting petitioner encouraged better distribution of state rules of procedure. West Publishing and the Library of Congress heeded this. But federal rules--derived from equity and common dialogue--offers the best basis

for comparison. There will be more inter-related study and reliance. The Supreme Court is justly asked about Protecting state procedural rights in Federal Court: a new role for substantive due process (S. Hofstader, 30Stanford L. R. 1019(1978)).

3. B. IMPROPER FEDERAL PRECEDENT IS UNFAIRLY RELIED ON

The good Judge Wolff rested the case on a Maryland federal decision, Holsey v.Collins, 90 F.R.D. 122 (1981). But in that case Holsey had much pleading experience, did not follow the Court's directives, and the federal rules were long standing, and his claims seem to have been very long (Holsey at 127). In this case plaintiff/petitioner had no legal experience but reading, the court's order (R 134) was general and written by defense counsel, the claims were 4 to 10pages--increased at the request of

Judge Cawood, decreased in an attempt to follow Judge Wolff, and the Maryland Rules were changing. In addition, Holsey relies on Bolding v. Holshuser, infra. Holsey at 127, but that court found that complaint partly sufficient, Bolding at 464, and discovery was deemed better than pleading for fact finding and issue defeinition, Bolding at 465. Those considerations were ignored in this case. *

It is important to consider whether state courts, with similar procedure mostly, can properly rely on federal precedents so different and in conflict.

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* It was strange too that Judge Wolff cited plaintiff/appellant/petitioner for a repetitive complaint, when on the one hand there were different basis for action and relief, and on the other that adoption by reference is permitted by modern rules of pleading, Md. Rule 2-303(d), Fed. R.Civ. P. 10(c).

4. A. APPELLATE DECISION FURTHER DENIED DUE PROCESS AND EQUAL PROTECTION

In the Maryland Court of Special Appeals, appellant/petitioner continued his fundamental questioning, and appellees thrice moved to dismiss and argued: No following the rules or intelligibility. They helped to sustain that fiction by cleverlychanging the date for entry into evidence of the correspondence showing prior knowledge and understanding:

In the meantime, on Sept. 23, 1984, Kungle filed an "Amendment of Complaint or Pleadings to Show Correspondence".. presenting some 30 pages of attach-ments.... Appellee's Brief 12	Let the record reflect I've been given what is called an amendment of com-plaint or pleadings to show correspondence and about 12 to 20 pages of attachments.. Defense Counsel T-12-13, Hearing 9-20-84

In it's opiinion, the middle court, for form over substance, accepted mis-statements statements as true. Corrections:

a. there were 3 sets of mostly consistent pleading to attempt to please 2 judges;

b. at every level a good part of this has been understood by lawyers and laymen;
c. appeal was of both the denial of the motion to alter or amend judgment and of the orignial judgment/order, Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 61 (1982), Unnamed Atty v. Atty Greivaance Com,33 Md . App. 473, 486 (1985);
d. the brief was in required order and the extract almost the complete record (recopied without required explanation by appellees--and motion to exclude such costs ignored later). The middle court held the appellant to blame:
a. for mistakes--invertingpages in the statement of facts;
b. for not following the rules--not numbering the questions presented;
c. for trying to follow the rules--citing to both record and extract page numbers (the former required by Md. Rule

1031(c)(4) and the other by common sense --Md. Rule 828(c)(4) sensibly calls for reference to the extract);

d.for not following what the rules should be--ommitting section headings in the argument (but compare the lack of guidance Md Rule 1031(c)(5) offers in comparison with Fed. R.App. P.28(a)(4).)

If the protections of the 14th amendment's due process and equal protection clauses are applicalbe to the states in criminal cases and at at a trial level, State Procedural rules,infra, should be in civil cases and at appellate level, particularly where fundamental principles and rights are at stake, and alsternatively, where state and federal procedures are similar or the same.

4.B. APPELLATE DECISION RELIED ON IMPROPER PRECEDENT AND FRAUD OF RESPONSDENT/APPELLEES

The cases the court cited are very distinguishable. Harman v.Harman, 61 Md App. 554, 558 (1985) involved lack of necessary references in statement of facts to evidentiary bases in record and transcript. In appellant's brief there were over 40 references. Kemp-Pontiac v. S & M Constr. 33 Md. App. 516, 522 (1976) involved serious deficiencies with regard to the record --not even suggested here. Nor were the appellees prejudiced, Burrel v. Frisby,212 Md 181, 184 (1957), and they had not difficulty ascertaining the questions on appeal, Martin v. Floyd, 317S.E.2nd 133, 135 (1985), even if they avoided them. Appellee Brief at 25-26. But as ColonialCarpets v. Carpet Fair, 36 Md. App. 583, 593(1976) strongly notes: Kemp, at 523,

> involvedthe seemingly attempted deception (which) is successfull could have resulted in a decision of this Court based on a false premise thereby causing undue damage to an innocent party.

In this case, it is the appellees/ respondents who practiced and achieved the deception, by fabricating and changing dates and fibbing about not knowing what they had received or written (See Hunter v. Baker, 154 Md. 307, 331 (1928)), which was relyed on Maryland courts at all levels.* But

> Fraud will vitiate any, even the most solemn transactions. the Amistad Case at 594.

Why should fibbing by counsel for a client be wrong in a criminal case, Nix v. Whiteside __U.S.__(1986) 54 LW 4194 (1986), and fibbing by both not matter in civil cases?

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* Other fibs, whether promises to talk or train workers and such are true but difficult to prove when no witnesses could be present. Saying "trust me" encourages reliance and is another avenue of fraud. Presentation of a fuller pattern awaits future presentation.

4. C. APPEALS COURT DENIED INTERNATIONAL LAW

The chart that the court refers to in their opinion is reduced copy of petitioners original comparison of the federal Bill of Rights most important provisions with the corresponding provisions in each state's constitution and of all the states with each other. It was available for use at oral argument. Even if Maryland courts can ignore their own constitution, they should follow the federal constitution. And even if American courts can avoid our constitutions, they should still respect the international agreements which cost so many millions lives to achieve. Justice Story's declaration that men are free and equal finds expression in the Universal Declaration of Human Rights, Art. 1 (earlier version by one G. Mason, 1776).*

If this petition is granted better analysis would be.

4. D. APPEALS COURT AVOIDED FEDERAL CONSITUTIONAL DUTY

It is wrong to rcognize a grievance for exclusion and purportedly search the record for facts but not for the violation of constitutional rights. Brookhart v. Janis, 384 U.S. 1, 4 (1965), Cox v. Lousisiana 379 U.S. 536, 545 (1964), Reese v. State, 17 Md.App. 73, 81 (1970).

4. E. APPEALS COURT INTRUDED INTO

It is wrong to see subversive activity in this effort to advance law and liberty and to improve and not to overthorw the government. Pennsylvania v. Nelson, 350 U.S. 497 (1956), United states v. Sinclair, 321 F. Supp. 1074 (1971). Unless,

> Thought is subversive and Revolutionary....
> B. Russell, in adler & van Doren, Great Treasury of Western Thought, 907 (1977)

5. THE STATE'S HIGHEST COURT IMPROPERLY AVOIDED ALL OF THE ABOVE AND THEREBY SUPPORTS THE STATE'S UPPER CLASS

The Maryland Court of Appeals did not find these matters in the public and denied Writ, this in spite of petitioner trying to follow Levine,J.*

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* Error on the part of a lower court is itself not sufficenit to cary the day. Instances may arise, for example, where we grant a petition even though we agree compeletely with the holding of the Court of Special Appeals. Conversely, petitions may be denied even though we think the case was decided incorrectly at the trial lvele and affirmed by the Court of Special Appeals. if, in any event, we regard the case as lacking in public interest. If I were asked for a definition of the statutory test, "public interest," I would respond with "public importance." At any rate, this is the term frequently heard in our conference. By public importance, we mean issues that are important to the publci, no merely to the parties involved in the case.

Public interest or public importance, if you will, are, of course relative terms, and there is no magic formula by which the Court can determine how to apply the test in a given case. A wide variety of considerations enters into the equation. A common example of public iimportance is a case involving the constituionality--state or federal--of a statute, particularly where the lower court, whose decision we are being asked to review, has declared the statute unconsitional. A related issue is one involving the denail of important rights under the federal or state constitutions.

Cases calling for construction of statutes, and even localordinancesor administrative regulations, particularly where state or local government is a party or expresses an interest are prominent candidates for a writ of certiorari. Additional categoriesin which certiaoari is frequently granted are those presenting legal isues of first impression in Maryland. Other instnaces in which we have granted ceertiori from time to time are: cases in which we think the Court of Special Appeals' holding should be expanded or modified; cases in which there is a conflict in the holding of separate panels of the Copurt of Special Appeals; cases presenting disputes in regard to the rules of procedure; casese presenting issues which are idential or similar to an issue presented in a case already pending in the Court of Appeals; and finally, cases involving an issue for which there is already a Maryland precedeent, whic, however requires reexamination because of changes in political, social or economic conditions. Invariably, a combination of two or more factors is present in cases which we review. It follow that one should advance all possible reason tending to demonstrate the importance of the issues presnted by the petition. in P. Sandler, Maryland Appellate Practice Handbook, B-203-5 (1977)

This Court may not wish to question Maryland's most distinguished courts and college. But then Justice according to Law (R. Pound, 13 Col. L. R. 696 (1913) becomes "Justice without law" (id) or law without justice.

> Where law ends, discretion begins, and the exercise of discretion may mean either benefiecence or tyranny, either justice opr injustice, either reasonableness or arbitrariness. K. Davis, Discretionary Justice, 1 (1960)

Another way oflooking at this is that it has ben going on for centuries. Only the best, the right people, in proper place, are fit to decide what is right, and true, and comprensible, and worthy to be included--this is an ongoing westeern tradition (See; R. Williams, Keywords (1976, 1983) on inter-related: class, educated, elite, intellectual, rational, revolution, stanadards and status. See also:

Charter of St John's College, 1784 Md. Law Ch. 37). It is an old Maryland tradition too:

> The Revolution in Maryland stimulated minds to weigh and re-examine the old institutiions. The measuring rod was republicanism. Definitions of republicanism varied. To some it means total freedom of expression for all classes whereformerly only the aristocraats had license to think, besepeak themselves, and act on public matters. To others, only those of education, wealth and social position were capable of constuctive thought and leader-ship. Walsh & Fox, Maryland, a history, 17 (1983)

6. THE WRIT SHOULD ISSUE TO BRING THESE MATTERS BEFORE THE COURT: FIAT JUSTIA, NON RUAT COELUM.

In order to bring these questions before the Court, an appeal was not taken, and this petition should be granted. (C. Wright, supra, 734)

As one not formally trained in law, but understanding the worth of our valued traditions, and in order not to complicate or confuse unnecessarily important issues, (Kolender v. Lawson, 103 S. Ct. 1855(1983)) this petitioner does not wish to represent himself in speaking before the Supreme Court, but would somehow find someone proper.

May Liberty* and Law advance, undeer God.

Fiat justia, non ruat coelum.

* Petitioner reserves a fuller discussion on liberty and intelligibility til decision on this petition, but would cite to: J. Acton, "History of Freedom in Antizuity and Christianity", Esssays in the Liberal Interpretation of History,(1967), I. Berlin, Four Essays on Liberty (1969), "From Hope and Fear Set Free" in Concepts and Categories (1979), B. Cardozo, Paradoxes of the Legal Science (1928), P. Freud, "Rationality in Judicial Decisions", NOMOS VII,Rational Decisions, 117(1974), F. Franfurter, "The Paths must be kept open" Of Law and Men (1965), L. Hand, The Spirit of Liberty, T. Kuhn, The Structure of Scietific Revolutions (1970), Rostensock Huessy, supra, UN Commission on Human Rights, The People Shall Judge, W. Willkie, One World (1943).

CONCLUSION

For these various reasons, this Petition for Certiori should be granted. Alternatively, this Petition should be granted, the lower decisions vacated, and the case remanded. Alternatively, this Petition asks summary reversal of the previous decisions.

Respectfully submitted,

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